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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,159	03/14/2002	Harald Ristau	361.034	2906

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EXAMINER

WILSON, LEE D

ART UNIT	PAPER NUMBER
3723	

DATE MAILED: 07/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/088,159	RISTAU, HARALD
	Examiner LEE D WILSON	Art Unit 3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 14 March 2002.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-14 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-14 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

Art Unit: 3723

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. There is no 1449 present in the application. There are references that have been submitted but the applicant will have to prove that the paper containing the 1449 was lost or Applicant should submit a 1449 and pay the fee for an IDS because now the 1449 would have to be filed after the first office action.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

#### **a. The following claims lack proper antecedent basis:**

i. “the external environment” in claim 1, line 11. This is the first time this has been mentioned.

ii. “the outwardly directed opening” in claim 1, line 16. This is the first mention for this term.

iii. “characterised . . . path (26).” in claim 1, after the first period. All of this lacks antecedent basis.

iv. “the upwardly directed opening” in claim 5, line 3. This has not been previously mentioned.

Art Unit: 3723

v. “the equipment holder” in claim 8, line 3. This has not been previously mentioned.

vi. “the outwardly directed opening” in claim 9, line 7. This is the first mention for this term.

vii. “the piston suction pipe” in claim 9, line 8. This has not been previously mentioned.

viii. “the vacuum chamber” in claim 9, line 9. This has not been previously mentioned.

ix. “the suction piston” in claim 9, line 10. This has not been previously mentioned.

x. “the strip or rod-shape extension” in claim 12, line 8. This has not been previously mentioned.

xi. Claims 13 and 14 lack antecedent basis.

**b. The following phrases are vague, indefinite, and/or awkwardly and confusingly worded:**

i. Claim 1 must be in one sentence form only. There are two periods present in the claim 1. The claim is indefinite.

ii. “or” in claim 2, line 3; claim 3, line 3; claim 10, lines 14&16&21; claim 11, lines 2&3; and claim 12, line 2. The term “or” is being used to claim limitations in the alternative which are not considered to be equivalents to each other. The applicant should use the Markus claim format.

Art Unit: 3723

iii. "strip-rod" in claim 10, line 23 and claim 11, line 2. These terms are being claimed in the alternative and there are not equivalent.

iv. "strip-rod shaped" in claim 12, line 2. These terms are being claimed in the alternative and there are not equivalent.

v. "preferably in the form of at least one pin or wedge" in claim 11, lines 3&4. There is alternative language claiming non equivalent structures. The term "preferably" make the claim vague because limitation must be positively recited.

***Claim Rejections - 35 USC § 102***

3. The following art rejections are applied as best as possible in view of the numerous 112 rejections.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5, and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hansen (3716307).

Hansen disclose a vacuum holding device having a vacuum holding device (fig.1) which is detachable from a vacuum source (not shown), a vacuum chamber (26), a valve (42), a mean for detaching a vacuum (18&16& the area around element 56), an external vacuum chamber (24&20)

Art Unit: 3723

***Claim Rejections - 35 USC § 103***

6. The following art rejections are applied as best as possible in view of the numerous 112 rejections.
7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
8. Claims 6 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen (3716307) in view of Arai (5184858).
  - a. Hansen has been discussed above.
  - b. Hansen does not disclose a rubber material for a seal.
  - c. Arai disclose a vacuum device having a rubber seal (1) which is used to create an air tight vacuum.
  - d. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Hansen device by providing a vacuum seal using rubber as taught by Arai which is used to create an air tight vacuum.
9. Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen (3716307).
  - a. Hansen is discussed above.
  - b. Hansen discloses the claimed invention except for valve being made out of rubber. It would have been obvious to one having ordinary skill in the art at the time the invention was made

Art Unit: 3723

to have made a valve out of rubber, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

c. In regard to claim 12, Hansen discloses the claimed invention except for valve with a strip or rod shaped valve being made out of rubber. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made valve with a strip or rod shaped valve being made out of rubber, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and then shape the valve in accord with its intended use. *In re Leshin*, 125 USPQ 416. and Obvious Design choice.

10. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen (3716307) in view of Fr 2577808.

a. Hansen has been discussed above.

b. Hansen does not disclose a pump as air source.

c. Fr 2577808 discloses a vacuum device having pump having a suction pipe and suction piston which allows a uses to provide a vacuum source by hand.

d. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Hansen device by replacing the vacuum source with a pump as taught by Fr 2577808 which allows a uses to provide a vacuum source by hand.

e. In regard to claim 11, Hansen discloses the claimed invention except for valve with a strip or rod shaped valve being made out of rubber. It would have been obvious to one having

Art Unit: 3723

ordinary skill in the art at the time the invention was made to have made valve with a strip or rod shaped valve being made out of rubber, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and then shape the valve in accord with its intended use. *In re Leshin, 125 USPQ 416.* and Obvious Design choice.

f. In regard to claim 9, the method is merely the natural function of the claimed apparatus.

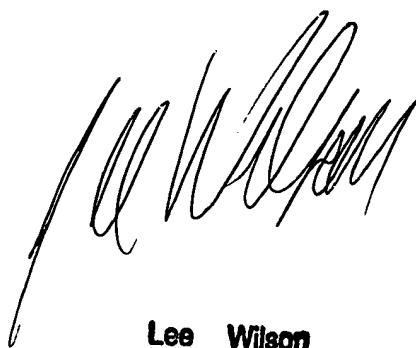
***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Smith, Burke, Czech, and Ireland disclose a device.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lee Wilson whose telephone number is (703) 305-4094.

ldw

July 10, 2002

A handwritten signature in black ink, appearing to read "Lee Wilson".

Lee Wilson  
Patent Examiner